



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

SEPTEMBER 13, 2011

PRESENT: Moniz, Mueller, Tanda, Koepp-Baker, Benich, Dommer, McKay

ABSENT: None

LATE: None

STAFF: Assistant City Manager (ACM) Little, City Attorney Wan, Senior Planner (SP) Linder, Consultant Heindel, and Development Services Technician (DST) Bassett

Chair Moniz called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

MINUTES:

August, 09, 2011

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO APPROVE THE AUGUST 09, 2011, MINUTES:

**THE MOTION PASSED (6-0-1-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: TANDA; ABSENT: NONE.**

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ORDERS OF THE DAY

No changes.

DISCUSSION ITEM:

1)BMR REDUCTION PROGRAM IMPLEMENTATION LANGUAGE

A request for review and comment on development agreement language proposed for the implementation of the BMR Reduction Program as approved by the City Council through Resolution 6450.

Linder presented her staff report.

McKay: Regarding item B, this actually seems to encourage developers to have small projects?

Linder: The phases within a project are defined by the number of allocations that are granted within that year, so it's really something that comes from the RDCS process. If you have a 30 unit project, you may receive 15 allocations one year and another 15 the next year. So the project would be divided into two phases.

McKay: And this is the last year that anything will be available for the BMR reduction?

Linder: That is correct.

McKay: So this only affects projects that have allocations right now?

Linder: Yes. There are ongoing projects that will receive future allocations, but those future years' allocations will not be eligible to participate in this.

Dommer: Will we be voting on item E tonight, or will it be excluded and we'll vote on that in the future?

Linder: City Council has already approved the language, so it's my understanding that this will not be coming back to the Commission.

Dommer: So we're not voting on it tonight, we're just discussing it?

Linder: We're just talking about it. In other words, is this a correct reflection of Council resolution 6450?

Wan: The City Council already approved the concept. The City will be giving a large consideration to developers to waive or reduce BMRs. The language might change a little bit, but the concept will probably not change. This is a waiver of fee refund claims in exchange for a reduction in BMR commitments under the contract.

Dommer: If the Commission is being asked for input, we might want to learn more about it because this seems to be a blanket waiver and we don't have a lot of information.

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Wan: This is not a blanket waiver. It's not saying that any claims against the City relating to your project are now waived. The concept is that it applies to fee refunds or reimbursements in exchange for the reduced BMR commitments.

Dommer: It doesn't mention that it applies to fees. It looks like a blanket waiver.

Wan: I believe it does.

Dommer: It says "any and all claims, actions, causes of action, demands, rights, damages, costs, attorney's fees, expenses and compensation whatsoever..."

Mueller: This is going to go back to City Council with language to be included in the Development Agreements when we go to amend them, right?

Linder: This is not a formal adoption tonight. We're just asking for feedback before implementation.

Moniz: I agree with Commissioner Dommer. It does seem to be a blanket waiver.

Tanda: Could you explain the last sentence under D1? It seems redundant.

Linder: It is redundant. If you would like it stricken, we can do that.

Benich: I was expecting to see revised language for Item E tonight. It contains very strong language that I object to.

Linder: Tonight is not a resolution. It's just for recommended language.

Moniz: This seems like it is going to require a lot of staff time to implement and track. How will that be done? How is this helping?

Linder: I agree with you. These are the instructions we have been given. We're trying to craft the language that will implement the Council resolution. So far, we haven't had to do a lot of babysitting for the projects that have participated in this program. There is that potential and Council has provided for the collection of a fee to offset that cost.

Moniz: Who would move all their BMRs to the front of the project?

Linder: Traditionally, nobody would. It was something they would want to do at the last part. But by moving things forward into the first phase, it would potentially qualify a project from having to provide any more BMRs in future phases.

Moniz opened the floor to public comment.

Scott Schilling of Benchmark Properties appeared: I have a concern with the program as recommended. The simpler we can make it, the easier it is to participate and to implement. There is a significant amount of investment just to record a map and pull the first building permit. Often it is millions of dollars to get to that point.

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Once you get that far, you're on the hook. So my recommendation is that Item B be kept very simple and that developers be given an exact BMR buyout fee amount—maybe based on a percentage. That way banks and developers know exactly what they have to do. Another item of concern is the insinuation that developers have been given a windfall in profit by eliminating BMRs. The reason we are here is because of the dramatic price drops in the product that we have to sell. There is no windfall. The pricing and the market have destroyed that profit. What you're trying to do is encourage developers to build. What it really comes down to is that it will cost developers less to build the BMR and hopefully they'll be able to afford to develop.

Mueller: You're suggesting that if you have a 20 unit phase where you have to build two BMRs, that after a certain percentage of building permits is pulled, you pay a fee and then you're done?

Schilling: Yes. 30 percent is about right. So when the developer has pulled 30 percent, he would pay his fee and then he would have met his obligation for the phase.

John Telfer appeared. I'd like to take exception to some of the language in the staff report. More than one developer disagrees with the language contained here. What seemed clear and concise on July 22nd, seems to have gotten very complex and difficult to administer. I don't believe the city has the manpower to do it. Given the difficulties in financing, how much are these additional fees going to be? We need to keep this simple. Let's go back to the original resolution as approved. This makes it too hard and too uncertain for developers to finish a phase. The way it has developed seems to have gone the other way.

Dommer: What specifically do you mean about difference in language?

Telfer: The incremental reduction table that has been created is too complicated. We should pick a number—a percentage—something like ten units and then the developer would be done with no additional fees due.

Mueller: The problem with that is, you might get started and then stop and then the city would lose those uncompleted BMRs. If you stop, then you're getting a benefit for something you didn't do.

Telfer: There are enough other controls in place. First, projects will not be eligible for any additional ELBAs. Second, the unused allocations for the balance of that phase will expire. The incentive was to get housing starts. The original resolution accomplishes that. This doesn't.

Mueller: Suppose you lose the allocations, then if you have to get new allocations to complete the project, there wouldn't be any BMR commitment left in the program because in theory you bought out of it.

Telfer: The lag time between getting allocations and starting to build is at least three years. So that's not going to work in today's financing world.

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Mueller: Except you have all kinds of projects that have started and stopped.

Telfer: Most of those have now been bought and are trying to start anew and they are doing that because of this policy. I thought we had tried to accomplish a friendly stimulus.

Dustin Bogue appeared of UCP. This was intended to be a stimulus plan, or a catalyst for new construction. Resolution 6450 was simple. It was easy to follow. This isn't. The proposed language creates problems because you can't have a contingent liability as a borrower. We're fortunate enough to be a well capitalized company. What this program amounts to is your first phase BMR reduction program. So it needs to be a fixed fee up front. The hammer of losing allocations if you don't complete is already great. Related to the BMR definition, none of us left the meeting without expecting to be able to get out of the program by paying an in-lieu fee. This diminishes the intended effect of this measure. Also, we did have the language reviewed by our council, and this does seem like a blanket waiver. That will be a problem for us.

Mueller: If you pick a 30 unit phase, and we give you a complete waiver based on a small percentage of the first ten units that gives the city no chance for recovery.

Bogue: Is the intent to be a catalyst for construction, or to be insurance to get the number of BMRs?

Mueller: Both. The left hand column in the table comes right out of the original program and nobody objected to that.

Bogue: Did it yield permits?

Mueller: It yielded construction of a lot of permits.

Bogue: I guess our argument would be that they're partially under construction due to the revised program.

Mueller: No, the left hand is exactly what the program is today. The right hand column is a literally a reversal of that increment based on the fact that you're paying the fee up front.

Bogue: The difference is that one is intended to capture a fee up front. The other one is paying a fee up front and trying to capture a fee at the end of the project if there is any residual. Nobody in Morgan Hill is talking about building 30 units at this time. Probably the most is 19.

Mueller: Which deadline are you talking about?

Bogue: September 30th.

Mueller: We're talking about units that you start post September 30 but go through June 2014.

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Bogue: But you're still talking about construction phasing. If you don't meet those deadlines you could have residual liability.

Mueller: But you have 3 and $\frac{3}{4}$ years to build 20 to 30 units.

Bogue: On that one phase, Joe.

Chris Borello of San Sebastian Homes appeared: I'd like to address Resolution 6450, Section 2. The big thing is motivation for construction and accountability for BMRs. If I have 20 units, then that would be 2 BMRs. The way we interpreted the resolution is that once we paid the \$150,000 [75,000 per unit] then we would be done with our commitment for that phase. Additionally, we thought that meant if you didn't complete construction by 2014, you would then lose that allocation. So if you only finished ten units by 2014 you would pay \$150,000 in fees but really only get the benefit of that one BMR. We interpreted that as the motivation to quickly construct the units. This language is very confusing. Section 2 of the Resolution makes it really clear; the money paid is the incentive. If a developer pays it and then doesn't build the units, that's the developer's loss.

Benich: So you're saying if you have a requirement to build two BMRs, you pay \$150,000 up front. Then if you don't build, the City keeps that money?

Borello: That's the way we see it.

Moniz closed the floor to public hearing and called for a break at 8:10, then reconvened at 8:20.

Benich: The concept of simplicity is a good one and I am sympathetic to the developers and to the City. My concern is that we get these BMRs built. We do need to simplify so the concept of paying a fee up front is a good one.

Koepp-Baker: I think we need to get houses built and if cooperating with developers does that, then that's a good thing. They have to pay an upfront fee and then they would lose allocations if they don't complete. Those are both big hammers. We need to find something that works for both parties.

Mueller: The developers are raising the question of a contingent liability being a barrier to development. Is that something that you've run into?

Linder: I couldn't comment on that.

Little: I can't comment either, but it certainly does make some sense.

Mueller: The problem is, this language was used previously in the original program and nobody raised it as an objection.

Linder: Joe, you're correct in that the original program was an incremental reduction but it didn't include a buyout provision. That is new per Council's expansion of the program. Before, you were only able to buy out for an increment that was less than half of a BMR.

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Tanda: I think we should try to make this as simple as possible and still achieve our objective of funding some BMRs. We realize we won't have as many funds as before, but that is meant to be a stimulus by the City for getting construction started. I like the simplicity of taking fees up front. I think tracking all these other dates is just too difficult and we need to avoid that for the sake of staff.

Dommer: Resolution 6450 was worded and approved and now we're reworking it. Was there anything from the City attorney asking for that, or was that due to staff?

Wan: We're not trying to reword Resolution 6450. We're talking about how to implement it. The policy is good but the implementation of it is subject to some interpretation.

Dommer: I think we need to get rid of the contingent liability for lenders, so I think that paying the fees up front is a good idea.

Wan: I think either approach could fit under the interpretation of Resolution 6450, but the contingent liability issue is a concern.

Little: Staff actually agendized this so that we could get direction from the Commission as to how they wanted it implemented. This is the direction we were given last time we met.

Wan: I welcome this discussion because confusion is bound to arise, so this is an opportunity to clarify and avoid later disputes.

McKay: It would be nice to simplify this. That in essence would reduce any concern about what is owed for the fractional BMR.

Mueller: The fractional BMR is not a new issue. That has been around as long as RDCS has been in existence. Paying an in-lieu fee up front is a new issue. I think if we're going to go with a simple percentage, then we have to go as high as 50 percent because then there is a high probability that the project is going to be completed. If we're going to go with the simpler language in the form of a buyout, then I think we need to wait until 50 percent of the phase is complete before allowing the buyout.

Benich: If we stay tight with these development dates, then isn't that enough of a safeguard because if they don't build the BMRs, the City keeps the money?

Mueller: The question is, at what point do we give the concession? When do we throw our hands up and say if you build three units out of 30, you're okay. Or do we say okay only when it's at 15 units.

Moniz: Maybe we could briefly discuss what happens to the in-lieu fees, or the BMR money?

Little: The City uses it to build future BMRs, or affordable housing units.

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Moniz: So there's no net loss to the City in BMR units?

Little: There is a net loss, because no BMR units can be produced for \$75,000. The average cost is well over \$200,000. We try to leverage those fees by partnering with a non-profit to get affordable housing units built. We use tax credits and state grant programs where possible, but the City is taking 50 to 60 percent of the equity position, so it's a huge investment.

Mueller: The money will go into a pot to build affordable housing. But most of the time when the city is involved, the homes that are built are very low income. But the ones that are not going to be built are the ones that are more expensive than that. We'll lose that bracket of BMR. There's probably no easy way to replace those.

Benich: The City understood that going into this program, and the whole object was to try and help the development community financially to start building homes.

Mueller: What's not clear to me is what percentage of the units we're talking about.

Tanda: I propose 0%. I would say that they pay the fee up front for the phase and not have a percentage at all. Then if they don't build the BMRs, they lose the money and they lose the allotments for the remainder of the phase.

Little: So if they reach the 2014 day and they've paid up front, they would forfeit?

Tanda: That is correct. And we wouldn't keep track of either percentage or timing. That would make it simple to administer and would help the development community get the financing they need.

Mueller: To me the issue is that if they pay the fee upfront and then they default, then we won't ever get a BMR, because contractually we've said they've completed the agreement. How do you go back on the development agreement and make a new buyer now do the BMRs?

Dommer: Then just word it so that's not the case.

Koepp-Baker: Make the language such that if they default it goes back to the beginning.

Tanda: So if a project starts and then doesn't complete by 2014, they would lose those allocations that they haven't completed?

Linder: Even if they lose some allocations, most of them have the ability to keep building because they already have additional fiscal year allotments. Then they would be able to earn back the allocations they lost because they would qualify as an ongoing project. Those allocations will be for a later fiscal year, but most projects have allocations that far exceed what they can build right now anyway.

Mueller: So we would lose the 20 units being finished on time, the project wouldn't have to re-compete because of ongoing allocations, and the City would

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lose the BMR and also. The whole point is to give the BMR concession so that they complete a phase.

Wan: We could draft the development agreement in order for you to get what you want.

Moniz: We need to come up with a solution.

Benich: I would suggest we ask for the upfront fee and then if they don't complete within the time frame required, then the fee jumps back up to the original amount.

Mueller: I think a simpler way to do it would be that if we take the upfront fee and then they don't complete the phase by June 30, 2014, then the original development agreement language for the BMRs would be reinstated. And the fractional amount would apply. That would give us a way to get the money upfront and still get the proportional amount of BMRs that were committed to being built. That would only be the case when they don't build.

Koepp-Baker: So we take an upfront fee, then if they default we reinstate the BMRs that were in the agreement.

Linder: I'm unclear what happens if a project has additional allocations, then they stop, then they continue on using the next set of building allocations.

Mueller: We're only talking about the BMRs in the phase that they defaulted. So the BMRs for that phase would be reinstated.

Moniz reopened the floor to public comment.

Mueller: If you have to come back and get more units at the end because you lost the allocations then those would be subject to the BMR program and the BMRs would have to be built for that phase as provided in the development agreement.

Bogue: I'm still unclear. So if you've lost your allocations you would be affected by whatever BMR policy is in place at the time of the new allocations?

Mueller: No, it would be the BMR policy that is in the development agreement because you wouldn't have had to re-compete.

Michael Cady of UCP appeared. So if you run into that scenario, then would you pay the fee for the units at the end or be required to build them?

Mueller: It would be to build the BMR because you're beyond the life of the program.

Talli Robinson of KB Home appeared. What if you're planning on building those units and you perform, would you still be required to pay the in-lieu fee up front?

Mueller: The intention is that you pay the fee up front, and then if you default on a phase, you don't get that money back and we would reinstate the BMRs.

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Linder: The fee wouldn't be applicable until after September, 30, 2012.

Moniz: If your project performs, your BMRs are waived and this discussion doesn't apply.

Linder: The buyout provision is available between October 1, 2012, and June 30, 2014. Then they're talking about paying before the first occupancy. If you default then you have to produce the BMRs.

Mueller: The straightforward way to look at this is, if you don't complete the phase you're going to lose the \$75,000 fee for the BMRs that you paid up front, you'll have to get new allocations because you'll lose the ones you didn't complete by the end of the BMR reduction program, and you'll have to complete the BMRs you committed to in the Development Agreement.

Tanda: I still think there is a very simple solution to this. And that is that at the 2014 there is a sunset and then following 2014 the current BMR program is what would take effect for any unbuilt allocations.

Mueller: Except they would never re-compete, so that's why they'd have to go back to the language that is in the Development Agreement.

Linder: I think I have an idea of what to do with this language: For projects that can perform by September 30, 2012, the table would be left as-is. We're going to drop off the second column. In lieu of the second column we're going to have a paragraph that says you will pay your in-lieu fee of \$75,000 per BMR when you start the project phase. If you are unable to complete 50 percent of your project phase by June 2014, then the City keeps the in-lieu fee and the BMRs must be constructed and enrolled in the City program. If you are able to reach that 50 percent then you are not required to construct the BMRs you only pay the fee.

John Telfer: I'm unclear about what happens when a developer completes on time.

Linder: That first column stays in place.

Mueller: If you're trying to complete with no fee, then you have to be done by September 30, 2012. If you don't complete by then, you're going to be subject to the in-lieu fee for the remaining units.

Moniz: There is a question about distributing BMRs so that they are built proportionally to the number of units in a phase and so could a BMR unit be brought forward?

Bogue: I'm not trying to move all the BMRs into one phase. The intent is to move one unit forward from a latter phase.

Moniz: Can we handle that on a staff level?

Linder: BMRs have always been proportional to the number of units in a phase. If

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it's supported by the fractional unit, I think we could advocate moving it forward.

Bogue: I'm asking that we be able to replace moderate rate units with BMRs.

Linder: As far as location?

Bogue: Yes. But going back to the original Site Plan, in some phases there are moderate rate units and no BMRs and in some phases there are BMRs and no moderate rates. So could we replace moderate rates with BMRs?

Mueller: It would have to be proportional to the phase.

Moniz closed the floor and moved on to Agenda Item No. 2.

CONTINUED
PUBLIC
HEARING(S):

2)DEVELOPMENT
AGREEMENT, DA-
11-06: BARRETT-
MH DOS

A request for approval of a development agreement for a 34 unit portion of the 52-unit single-family residential project located on the northwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district (APN 817-76-019, 021 & 022).

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO
TABLE AGENDA ITEM 2

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

PUBLIC HEARING:

Moniz excused himself at 9: 30. Benich took over as chair.

3)GENERALPLAN
AMENDMENT,
GPA-11-01/ZONING
AMENDMENT,
ZA-11-01/
ENVIRONMENTAL
ASSESSMENT, EA-
11-01: CONDIT-UCP

A request to amend the General Plan Land Use Designation and Zoning on an 18-acre site bordered by San Pedro Ave. to the south, Condit Rd. to the west and Murphy Ave. to the east. The proposed amendment would change the land use designation from Commercial to Single Family High, and the zoning designation from General Commercial to R-1 (4,500). A Mitigated Negative Declaration is proposed. (APNs 817-12-006 & 009)

Linder presented her staff report.

Tanda: What is the potential for the High Speed Rail (HSR) on this property?

Linder: It is one of the alternative routes proposed. The HSR would have to mitigate and address those impacts, they chose this route.

Dommer: Where are the lights on the soccer fields and what is the day to day activity there?

Linder: The lights are on until around 10:00 pm. They are directed downward but there is a glow. The soccer fields are used to its full potential all year round, both weekdays and weekends. The RV dealership also has security lighting. And if they

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want to expand their night time use, they are allowed to.

Little: The partnership that we have for these facilities includes trying to increase the amount of fields, including other games such as rugby. So there is an expectation to try and increase the volume of play at the facility.

McKay: How was this land originally zoned?

Linder: It was originally residential. But because of considerable development around it, including the dealerships, it has been commercial since about 1993.

Koepp-Baker: I would first like to disclose that I met with the developer yesterday. When did the property go to commercial?

Linder: Somewhere in the mid to late '90s.

Koepp-Baker: This property went from agricultural to residential to commercial. Given that we have a rather high commercial vacancy, what is the expectation that this land will be developed as commercial within the next ten years?

Linder: It probably won't be developed as commercial in the next ten years, but we get inquiries from churches and schools quite frequently.

Koepp-Baker: What would have the larger income potential for the City, commercial or residential for the tax base?

Linder: I would not know as far as the greater financial benefit to the city. In the long run, probably commercial. In the near term, probably residential. But that could occur on the over 800 acres of vacant residential land we currently have in our boundary.

Benich: Did the zoning to commercial change with the last General Plan update?

Mueller: No, the commercial designation came about when this property was seeking inclusion in our Urban Service boundary. I believe it was the mid-90s.

Koepp-Baker: Was it rezoned to commercial at the city's request, or at the property owner's?

Linder: At the owner's request.

McKay: If this were to be rezoned as residential, what would be the consequences of having future commercial development on adjacent properties, knowing that that would be a less than ideal situation?

Linder: There would have to be disclosures made when the homes were sold, but I don't know if there's any way to completely mitigate for future development and eliminate homeowner complaints.

Mueller: Even though you attempt to mitigate, there's no way to completely do it.

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There's still going to be commercial traffic, garbage and delivery trucks, etc. Walnut Grove drive has been very contentious for commercial litigation from the beginning.

Benich opened the floor to public comment.

John Telfer appeared. I can shed some light on the history of this property. I have worked on this property for around 30 years. For the majority of that time, this was residential. The owner did request a plan designation change to commercial. At that time, we did have staff resistance to go to commercial, so this seems ironic now. We have attempted for many years to attract developers for a commercial site. The four parcels total approximately 32 acres, which would accommodate a "power center" or regional shopping center. It's a very deep site, however, and it does not have freeway frontage, so that makes it unattractive for regional commercial development. But the owner sees residential development there as enhancing the ability to attract a neighborhood center in the future. Another problem with this site for commercial is that the soccer fields make this area extremely underparked. We have been working with the Parks and Recreation Department. on that and we believe we have a generous solution. Lastly, we have an overabundance of commercial land available for development that we won't even use up in the next couple of decades—more than we do for residential. In order to support commercial, we need more residential.

Dustin Bogue of UCP appeared: The current General Plan is dated 2001, and will probably soon be updated. That is when requests for changes generally start coming in. Impacts are pretty minor and can be mitigated. We believe that this can be a compelling site development that all the neighbors are in support of. We believe we can provide 145 parking spaces which would be beneficial to the soccer fields. As Mr. Telfer said, it improves the likelihood of commercial development on the front portion of the parcels. We believe the transition with a higher density product is appropriate because there would be low density on one side and commercial on the other. There is also R1 4,500 right across from the Ford Dealership. There is a similar situation on Walnut Grove. There is applied precedent for this request. Colliers reports that current office vacancy is 36 percent. Industrial is 19.44 percent. Retail is 13 percent. There are 10 million square feet of commercial space available for development and right now there is negative absorption. We talked to Jim Schilling, a local developer, and he said that the site was entitled sometime "in the 1970s era." We really do believe that residential is a good use for the site.

Dommer: Can you talk about the market you're planning to sell to and how the project can mitigate against the impacts?

Bogue: We can mitigate for traffic and lighting. We can provide granny units to make the product attractive for families. There is an abundance of data for buyers in the market now. This is exactly the type of product they want, with retail and commercial services nearby.

McKay: This apparently is a long process. Did you try to get an initial idea of whether or not there was support for this type of development?

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Bogue: We did, and we thought we had general support from Planning Commissioners and City Council.

McKay: Would you be planning to build or sell this project?

Bogue: We would be planning to build. We're very serious about this and have invested a lot of money already. If you're willing to approve it, we'll have a Measure C application submitted on Oct. 1st.

Vince Burgos appeared on behalf of the project: We will be dealing with mitigation measures in the site review process. We're not getting rid of commercial; we're just adding residential to it. We would be providing the transition. We are not trying to create a new product. This has been done in many places, including just to the north of Dunne.

Julie Hutcheson appeared for the Committee for Green Foothills: I agree with staff's recommendation tonight to advise against this request. There is no need at this time to rezone to residential. There is plenty of residential land already available. If this is rezoned, it will open the doors for other commercial land owners to ask for their land to be rezoned also.

Benich closed the floor to public comment.

McKay: I like the fact that there is a developer ready to go. I am concerned about the future problems that might arise with neighbors and surrounding commercial development, but overall I think this is a viable concept.

Dommer: If you look at all the other adjoining commercial properties, they all face the freeway or front on Dunne. This land is set so far back and doesn't face the freeway or front on Dunne. It seems unlikely to attract commercial development. I'm not too concerned about the sports complex. I actually think this parcel works better as residential.

Tanda: 36 years ago I was an engineer for San Jose. I saw that if you have a good General Plan and stay the course, you end up with a good community. I agree with staff's report. Maybe this isn't prime time to go commercial now, but at some time I believe it will, and it would be a great location for a church or school. I am in support of staff's position.

Koepp-Baker: Since I moved here almost 14 years ago, there has been no residential development in the southeast quadrant. I would like to see a balance between commercial, industrial and residential. People want to be close to shopping. Nothing has happened there for 40 years. If the city can get impact fees and property taxes from this, I think they should be allowed to do it.

Mueller: I'd like to point out that when we set up the R1 4500, we didn't even consider this type of property for that designation. We didn't even anticipate it. R1 4500 was meant to be a transition between higher density residential and lower density residential. This just doesn't fit. If we do go to residential, R1 4500 is way

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too low of a density for that site. If we want to maximize the money that the city would get, I would guess we're probably not getting the money that we should be getting out of the thousands of people that support the sports complex. We ought to look at how we can support the sports complex. But this doesn't meet the biggest demand we have in Morgan Hill which is for a major apartment complex. That would be a much better solution. The idea of a General Plan change is of some interest, but this product doesn't cut it.

Benich: I agree with Commissioners Tanda and Mueller. I don't think now is the time to be changing the General Plan or the zoning. I am reminded of an analogous situation that occurred several years ago. When St. Louise closed its doors, many people wanted to see it become a school. We had to look at the long term benefits to the community. So we denied that application. And that was wise. The DePaul center is functioning well and maybe someday we will get a hospital again.

Dommer: If we're looking at what's best for the city, our economic picture is in terrible shape. We need to add to the economic base and a density increase makes a lot of sense, like Commissioner Mueller said. Would you be willing to consider higher density?

Bogue: Yes.

Dommer: A budget consideration should play a big part of the decision.

Benich: I agree, and that's why it needs to be further explored at our General Plan update which is coming soon.

Mueller: I don't think we need to wait for the General Plan update because we don't even know how we're going to pay for that. I also don't think we can look at a residential project as creating long term revenue for the city. If I remember right, a brand new single family residential home pays for itself for the first few years, but due to Prop 13, the farther you go away from that date, the less ability it has to pay for its services. I firmly believe that a higher density project would be better able to mitigate. I cannot support this. We have several options here tonight: One option would be to ask the applicant to move forward with a General Plan change at a higher density because we have a huge need for rental projects in this city. But that would mean they would not be able to make an application this year because there would be environmental work. Or we can take action on the current type of application and send it to council now.

McKay: If we say no tonight, does that give them the opportunity to quickly turnaround and resubmit for a zoning change and General Plan amendment.

Mueller: If we vote tonight the vote may be split or we could say no and it could go to City Council for their decision. Right now, the environmental document will not support a higher density because it assumed a different number of units. So one option would be to ask the applicant about discussing with staff the possibility of moving forward with the General Plan change at a higher density. Then try to leverage the environmental work that has already been done to get that quicker. If they want to move forward with the current action, we could continue this for two

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weeks so we could take action then. If they want to look at the higher density option, it would probably end up getting tabled for the environmental work.

Linder: If they want to move forward with this application, we have to take action tonight so that this can be found in compliance with the General Plan by October 10th. If the Commission takes action this evening, it is currently scheduled to be heard by City Council on October 5th.

Benich: If we deny it, could they appeal it to the City Council?

Linder: Council has the final say anyway, so they wouldn't appeal it to City Council.

COMMISSIONERS TANDA AND BENICH MOTIONED TO RECOMMEND THAT COUNCIL DENY THE GENERAL PLAN AMENDMENT ZONING CHANGE.

**THE MOTION WAS TIED (3-3-0-1) WITH THE FOLLOWING VOTE:
AYES: MUELLER; TANDA, BENICH.
NOES: MCKAY, DOMMER, KOEPP-BAKER;
ABSTAIN: NONE;
ABSENT: MONIZ.**

Benich: We're tied, so now what? It goes to City Council?

Mueller: It could go to City Council with no recommendation from the Planning Commission. Or if the Planning Commission wanted to advise the City Council that we would be more inclined to look at a higher density project, then we could make that as part of the record. As a point of clarification, in the Mitigated Negative Declaration and the Monitoring document, there were some formatting and labeling issues. The documents were really hard to follow because they didn't have the impact clearly identified with an impact label and the associated mitigating measure clearly defined. So there is a draft of a monitoring plan that has all those appropriate labels in it that was received from the consultants tonight. I would suggest that that document and a modified Mitigated Negative Declaration be part of what goes to City Council.

Benich: So we need to see if there's a favorable consensus among us looking at a higher density. Let's take a poll.

McKay: I would be in favor of that.

Dommer: Yes, I would be in favor.

Tanda: I would be, at an appropriate time. When you do a General Plan you look at all concerns. Tonight we're looking at what would work for a specific party. We're not looking at this as a potential use for an expansion of our sports complex. We only have one property where an expansion would work, and that's this property. But we have several properties that would work for residential. We have 7 years of allocations that if they're developed at 250 per year, are out there. I do

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not like the idea of property around what is probably our biggest regional facility being looked at outside the context of a General Plan amendment, regardless of what it is.

Koepp-Baker: Of course I would look at it as a higher density.

Mueller: I already said I would.

Benich: I said no, so it's 4 to 2, as an advisory action for City Council. We'll now move on to Agenda Item 4.

OTHER BUSINESS:

Moniz returned to the floor at 11:00 p.m.

4)MONTEREY ROAD STREETSCAPE PRESENTATION

Receive a presentation by Callander Associates updating the progress of the 3 alternative conceptual designs and public comments concerning the Monterey Road streetscape through downtown, from Main Avenue to Dunne Avenue.

Heindel and Consultants presented the report and traffic analysis on the downtown streetscape.

Eric Wallace of the Downtown Association appeared: I want to emphasize that what most of the downtown merchants would like is two lanes. We want a pedestrian friendly area and a quieting of the traffic. We find it's not real safe to walk downtown. The majority favored cutting down on the traffic. We want the restaurants and shopping to thrive. Since we don't have \$8 million to spend on re-doing the streets, why can't we just try narrowing down the streets using planters, etc., and allow restaurants to expand into the space?

Mueller: Your statement in your letter about one lane in each direction being the most supported due to the least cost and least disruption is false. It is in fact the most expensive alternative and will cause the most disruption to put in place.

Wallace: That's presuming you extend the sidewalk out eight feet. We're talking about using planters to block off the other lane. We're not asking that the street be torn up.

Mueller: But that's what the third alternative in the two-street option is. You want to go to a permanent two lane street which will cost something in excess of \$8 million.

Wallace: The purpose of my letter is to say that we don't want to tear the streets up and we're not really looking for an eight foot extension of the sidewalks. We don't want to spend eight million dollars. But the third alternative is the only two-lane example given. If I could make up my own example, I would leave the streets as they are but cut it down to two lanes through the use of barriers and planters.

Moniz: The big question is two or four lanes? Whatever happens in the right-of-way is still a little bit flexible. What's important for Council to know is whether you want two or four lanes. You have a chance between now and October 14th to clarify your letter.

Tanda: What if ultimately the city does endorse two lanes, but to mitigate unnecessary delay, it reduces all on-street parking? What would you think of that?

Wallace: There isn't that much on-street parking anyway. What we're trying to do is test it out for a year or two and see if it would improve the environment and create the destination we're talking about. I don't think parking is as critical as it used to be because of the Third Street parking lot that was created. We're just really looking for the traffic calming and the ability to have more activities.

Moniz closed the floor to public comment.

Benich: With respect to the presentation, it doesn't seem to address 1) where future parking is going to be; 2) what the residential population in the downtown area is projected to be in the year 2030.

Koepp-Baker: I was looking for financial information to be included, and it wasn't.

Mueller: Our downtown is not a self-contained community and it never will be. That is not our goal. We're not ever going to have enough Morgan Hill residents to support all the retail we're planning to put in place. It is going to take all of Morgan Hill and more. Monterey is going to be the key street for getting the people there. I am personally very skeptical of two lanes, primarily because of public safety. I don't believe you'll be able to move the traffic through with one lane in each direction. I question whether our fire equipment could even reach a fourth story when the engine would be 20 feet away. My recommendation is that we focus on the first to fourth sections by looking at 1) taking away the on-street parking and using it for restaurant space, especially on the east side; 2) doing things to improve the pedestrian traffic; 3) narrowing the lanes with striping and maximizing the area that we have. I'm really looking at a scaled down version of alternative 1. I don't know that we ever need to go south of Fourth Street because the community center is on Fifth Street, the building on the corner of Fourth is exempt from being redeveloped and there is the historic church across the street. So we ought to look at a much smaller area and try to get the most bang for our buck.

Moniz: The studies and the input from the businesses make a compelling case for two lanes, so I'm interested to see where Council is going to go with that. The biggest concern I have is the cost. The perception of spending \$8 million on something that is nice would be difficult to swallow when we have such a tight budget city-wide. It looks nice and sounds nice but I am uncomfortable spending that much money in today's economy. Also, if we were to do an extensive project through the downtown, I'd like to see a more detailed plan of how the construction is going to be phased, so we don't end up with a problem like Gilroy experienced. I also like the idea of a one year trial period of what a two-lane downtown would be like—something that is not permanent but would provide a general feel.

Tanda: My input is a proposal and that would be to have a two-lane roadway between Main and Fifth Street for a six month test period subject to 1) the intersection levels at Main and Monterey be mitigated at all times during the test period so that it doesn't become Service Level F; 2) the parking conflict is

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mitigated by the temporary removal of on-street parking; 3) the timing of the Hale Avenue extension be determined by the action of the state with respect to RDA funds; 4) we begin discussion with the transit district for the possible relocation of bus stops to Depot Street; 5) we establish a truck prohibition between Main and Dunne Avenue; and 6) the temporary test plan be attractive and affordable. I don't want to see an ugly area as a result of the test.

Dommer: I don't think that removing parking is going to have that large of an impact. So I would go for removing the parking, bringing the curb out, making a broader bicycle lane and then that gives us flexibility to decide whether we want two or four lanes.

McKay: I agree with the trial lane shutdown then we need to clearly define what we want the downtown to be and what we think the trend will be.

Mueller: I agree with the trial. But without having all the new business and residences in place, we won't understand the impact of what the project will be when it's done. So doing this as a trial is a better way so that we can see what we will have when it's actually done.

ANNOUNCEMENTS / COMMISSIONER IDENTIFIED ISSUES

None.

CITY COUNCIL REPORTS

The ordinance regarding the precise development plan for Alicante was approved by City Council September 7, 2011 and it was consistent with the recommendations that Planning Commission made. Also, the September 21 Council meeting is canceled.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 12:30 a.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician